

REMARKS

Claims 1 through 14 are pending in this application, of which claims 1 through 9 stand withdrawn from consideration pursuant to the provisions of 37 C.F.R. §1.142(b). Accordingly, claims 10 through 14 are active.

Claims 10 and 14 have been amended. Care has been exercised to avoid the introduction of new matter. Indeed, adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, ([18] appearing at page 4 of the written description of the specification, noting that any formal issues raised by the Examiner have been addressed. Applicants submit that the present Amendment does not generate any new matter issue.

Claim Objections

The Examiner objected to claims 10 and 14 identifying perceived formalistic issues. In response, formalistic issues have been addressed in a manner consistent with Examiner's courteous suggestions, thereby overcoming the states bases for the claim objections. Accordingly, withdrawal of the claim objections is solicited.

Claim 10 was rejected under 35 U.S.C. §102 for lack of novelty as evidenced by Huang et al.

In the statement of the rejection, the Examiner refer to Figs. 1-4 of Huang et al. and to portions of the patent text, asserting a disclosure of a semiconductor device corresponding to that claimed. This rejection is traversed.

The factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically

claimed is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.* 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). In imposing a rejection under 35 U.S.C. §102, the Examiner is required to specifically identify wherein an applied reference is perceived to identically disclose each and every feature of a claimed invention. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). That burden has not been discharged. Moreover, there are significant differences between the claimed semiconductor device and the semiconductor device disclosed by Huang et al. that scotch the factual determination that Huang et al. disclose a semiconductor device identically corresponding to that claimed.

Unfortunately, Huang et al. refer to Figs. 1-3 as prior art to illustrate a problem addressed and solved by the disclosed invention wherein a BPSG gap fill is employed. However, when it comes to the disclosed invention, it is then that a conformal oxide 110 is employed. However, Huang et al. also refer to Fig. 1. The point is that when it comes to the invention of Huang et al., it is not a BPSG layer is employed but, clearly, an HDP oxide layer which **may** contain phosphorus. In the invention of Huang et al., which utilizes a conformal oxide film, only HDP with phosphorus is employed-not BPSG. Accordingly, as a factual matter, Huang et al. do not identically disclose each feature of the claimed invention.

At any rate, in order to expedite prosecution, claim 10 is being clarified by reciting that the BPSG layer is a SA-CVD layer. Clearly, Huang et al. teach away from a BPSG layer in the first place, and certainly require an HDP oxide layer. There is neither any teaching or suggesting

to deviate from the expressed teachings of Huang et al. by employing an SA-CVD layer of BPSG.

One further point should be made. Huang et al. make much of the use of an HDP layer because of its distinguishing fiscal characteristics, i.e., good thermal stability, low moisture uptake and excellent mechanical properties, because it is essentially similar in properties to a dense thermally-grown oxide. No so for an SA-CVD layer of BPSG. See, for example, *In re Garnero*, 412 F.2d 276, 162 USPQ 221 (CCPA 1969).

The above argued structural differences between the claimed semiconductor device and the semiconductor device disclosed by Huang et al. undermine the factual determination that Huang et al. disclose a semiconductor device identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claim 10 under 35 U.S.C. §102 for lack of novelty is evidenced by Huang et al. is not factually viable and, hence, solicit withdrawal thereof.

Claim 11 was rejected under 35 U.S.C. §103 for obviousness predicated upon Huang et al.

Claims 12 and 13 were rejected under 35 U.S.C. §103 for obviousness predicated upon Huang et al. in view of Tseng et al.

Claim 14 was rejected under 35 U.S.C. 103 for obviousness predicated upon Huang et al. in view of Tseng et al. and Nakatani.

Each of the above rejections under 35 U.S.C. §103 is traversed. Specifically, each of claims 11 through 14 depends from independent claim 10. Applicants incorporate herein the arguments previously advanced in traversing an imposed rejection of claim 10 under 35 U.S.C. §102 for lack of novelty as evidenced by Huang et al. Neither the Examiner's additional comments nor secondary references to Huang et al. and Nakatani et al. cure the previously argued deficiencies of Huang et al. Accordingly, even if the semiconductor device disclosed by Huang et al. is modified as suggested by the Examiner, and Applicants do not agree that the requisite fact-based motivation has been established, the claimed invention will not result.

Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

Applicants, therefore, submit that the imposed rejection of claim 11 under 35 U.S.C. §103 for obviousness predicated upon Huang et al., the imposed rejection of claims 12 and 13 under 35 U.S.C. §103 for obviousness predicated upon Huang et al. in view of Tseng et al. and the imposed rejection of claim 14 under 35 U.S.C. §103 for obviousness predicated upon Huang et al. in view of Tseng et al. and Nakatani et al. are not factually or legally viable and, hence, solicit withdrawal thereof.

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Based upon the foregoing it should be apparent that the imposed objections and rejections have been overcome, and that all active claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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